

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2292/2016
MA No.10/2017

Reserved on - 10.01.2017

Pronounced on - 24.01.2017

**Hon'ble Mr. P.K.Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Gurpreet Singh,
Dy.Electrical Inspector,
Aged about 55 years,
S/o Sh.Sartaj Singh,
R/o F-174, Vikaspuri,
New Delhi-110018. Applicant

(Through: Mr.M.K.Bhardwaj, Advocate)

VERSUS

1. Govt. of NCT of Delhi,
Through its Lt. Governor,
National Capital Territory of Delhi,
Raj Niwas Marg, Delhi-110054
2. The Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, I.P.Estate,
New Delhi-110002
3. The Secretary-cum-Commissioner (Labour),
Labour Department,
Govt. of NCT of Delhi, 5, Sham Nath Marg,
Delhi-110054
4. The Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi. Respondents

(Through: Ms. Sangita Rai, Advocate)

O R D E R

Hon'ble Mr. P.K.Basu, Member (A):

The applicant is working as Deputy Electrical Inspector (DEI). Admittedly, there are four posts of Deputy Electrical Inspector. The next promotional post is of Electrical Inspector.

The Recruitment Rules (RRs) for Electrical Inspector provide that the method of recruitment will be by deputation/promotion failing which by direct recruitment.

2. Vide Circular dated 03.06.2016, the NCT of Delhi provided that for filling up the vacant post of Electrical Inspector, the method of recruitment will be by deputation from officers of Central /State Government /U.Ts /Autonomous Statutory Organisations or State Electricity Boards.

3. Admittedly, an FIR no. 37/2010 was lodged against the applicant by Anti Corruption Branch under Section 7/13(1)(d) of Prevention of Corruption Act, 1988. He was in judicial custody for more than 48 hours and remained suspended between 11.11.2010 and 10.05.2011. The applicant filed OAs 3210 and 3805/2012. In the first OA, he had sought relief for his promotion on ad hoc basis as Electrical Inspector. Second OA 3805/2012 had been filed by the applicant being aggrieved by the action of the respondents posting him as OSD (Coordination) [Labour Welfare] i.e. the post involving non-technical and non-sensitive responsibility on revocation of his suspension. Both the OAs were dismissed. Aggrieved by the order dated 25.03.2014 of this Tribunal, the applicant filed Writ Petition (Civil) 2541, CM No.6842 and Writ Petition (Civil) No. 3294, CM No. 6812 all of 2014, which was disposed of on 25.08.2014. The directions of the Hon'ble High Court were as follows:-

"3. During the course of hearing, it was submitted that the charge sheet had been filed by the police authorities and the charges were framed in July, 2014 by the Court of the Special Judge dealing with Anti Corruption Branch (ACB) cases under the Prevention of Corruption Act? Sh. B.R.Kedia. In these circumstances, we are of the opinion

that no directions, at least of the kind sought by the petitioner, cannot be granted. However, the concerned Criminal Court/the Special Judge shall ensure that the adjudication of the charge against the petitioner in FIR 37/2010, Police Station Anti-Corruption Branch (ACB) is taken up and completed as expeditiously as possible and a judgment tendered preferably within six months from today. It is open to the respondents to immediately thereafter, having regard to the findings of the competent criminal Court, to pass suitable orders with respect to the petitioner's request for repatriation or promotion for the post of Electrical Inspector.

In addition to the criminal case, departmental enquiry has also been ordered which is under progress. Out of the four incumbents in the post of DEI, three DEI do not fulfil the eligibility criteria as per the RRs and the applicant was left as the only possible candidate. There are two posts of EI to be filled up.

4. The respondents considered that since the applicant is facing a criminal proceeding and also departmental proceeding and the other three DEIs are not eligible, the only option left is to appoint Electrical Inspector on the basis of deputation from other Central/State Government/U.Ts department etc. Even if the applicant is considered for promotion by the DPC, it would be a futile exercise as his case would have to be kept in sealed cover as per procedure and as a result the post of Electrical Inspector would remain vacant.

5. The applicant is aggrieved by this decision of the respondents and has filed this OA with the following prayers:-

"(i) To quash and set aside the impugned circular No.F.1/31/708/LC/Estt./2011/681 dated 03.06.2016 (A-1) and declare the action of respondents in not considering the applicant for promotion to the post of Electrical Inspector and filling up the said post through deputation as illegal and unjustified and

issue directions to fill up the said post of Electrical Inspector through promotion by considering the case of applicant.

- (ii) To direct the respondents to consider the applicant for promotion to the post of Electrical Inspector on regular basis and in the eventuality of resorting to sealed cover procedure, the applicant be promoted at least on Adhoc basis with all consequential benefits as per OM dated 14.09.19092 and law on the subject.
- (iii) To allow the OA with cost.
- (iv) To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

6. The grounds argued by the learned counsel for the applicant are as follows:

- (1) That Circular dated 3.06.2016 is in violation of the Recruitment Rules as the respondents cannot override the provisions of RRs notified under Article 309 through a Circular.
- (2) Since the applicant had completed required service of 5 years for promotion to the post of Electrical Inspector, the respondents should have held DPC as he had a right for consideration for promotion. In this regard, he relies on the judgment of Hon'ble Supreme Court in **Delhi Jal Board Vs. Mohinder Singh** (JT 2000(10) SC 158).
- (3) The criminal case was registered back in the year 2010 and had not been completed in spite of the directions of the Hon'ble High Court to complete the same within six months. Therefore, the applicant cannot be deprived from regular promotion on

account of aforesaid criminal case kept pending for no fault on the part of the applicant. The disciplinary proceedings are also of no consequence as the same are based on the same set of facts on which the criminal case has been registered.

7. Learned counsel for the applicant relied on the following judgments:-

- (1) **Union of India and Others Vs. Sangram Keshari Nayak** (2007) 6 SCC 704) where the Hon'ble Supreme Court held that right to be considered for promotion is a fundamental right and suitability for promotion was left to be decided by the DPC.
- (2) **State of M.P. Vs. J.S.Bansal and Another** (1998) 3 SCC 714), this case dealt with sealed cover procedure to be adopted.
- (3) **Major General H.M.Singh, VSM Vs. Union of India and Another** (2014) 3 SCC 670). In this case, Hon'ble Supreme Court held non consideration for promotion violates Articles 14 and 16 of the Constitution.
- (4) **A.Satyanarayana and Others Vs. S.Purushotham and Others** (2008) 5 SCC 416) where the Hon'ble Supreme Court held right implies that promotion chances cannot be foreclosed forever.
- (5) Order of this Tribunal dated 30.11.2016 in OA 2227/2013. It is stated that this OA was allowed with the direction to respondents to hold review DPC as

the Tribunal held that the applicant is entitled for ad hoc promotion to the post of Assistant Engineer (Civil) since the criminal case against him has not yet concluded despite a lapse of 16 years and even the trial in the case has not begun. The Tribunal relied on the decision of Hon'ble High Court in the case of **North Delhi Municipal Corporation Vs. Rakesh Ahuja** (W.P (C) No. 10656/2015) decided on 28.07.2016.

8. To summarise, the case of the applicant is that:

- (i) As per settled law he has a right for being considered for promotion which cannot be denied to him even if criminal case is pending as that would be decided by the departmental promotion committee and not by any one else whether his case qualifies to be put in the sealed cover or not.
- (ii) The Circular dated 03.06.2016 is null and void as it runs contra to the recruitment rules notified under Article 309.

9. Learned counsel for the respondents stated that since the applicant was accused in Anti Corruption Case; kept under judicial custody for more than 48 hours; his suspension was also revoked on the condition that he should be posted in a non technical non sensitive post; the criminal case against the applicant is pending at the stage of evidence of prosecution witnesses, the department felt that it would be a futile exercise

to go through the motion of a DPC and keep his name in sealed cover as the other three DEIs were not eligible and, therefore, they opted for the option of deputation which is provided under the RRs. Learned counsel for the respondents also relied on the judgment of Delhi High Court in **Union of India & Anr. Vs. Suresh Chandra** (W.P (C) No. 335/2012), particularly on para 32 in which the Hon'ble High Court has opined as follows:-

"32. In view of the above discussion, we hold that the department was completely justified in not promoting the respondent to the post of Director (Sugar Technical) for the reason 'prosecution for a criminal charge was pending' when the respondent became eligible to be promoted to said post in the year 2007 inasmuch as the police had filed a charge sheet in the criminal court dealing with the FIR registered against the respondent in the year 2003. There was no need to hold any DPC because there was no eligible candidate to be considered and thus it would be useless for a DPC to meet and kept the recommendation in a sealed cover. A question may be put:

What would happen if the respondent would be ultimately acquitted? The answer then would be that in said situation a DPC akin to a review DPC would be required to be held to consider respondent's candidature as of the year of the vacancy and his eligibility."

10. Heard the learned counsel and perused the various judgments.

11. There is no doubt that the applicant has a right to be considered for promotion but this has to be seen in the particular facts of this case. There were four DEIs including the applicant. Three were not found eligible at all. Against the applicant there is a criminal case pending (apart from the departmental case) and in the criminal case charges have also been framed in July, 2014 and it is at the stage of recording of evidence of prosecution witnesses. Therefore, even if a DPC is convened the case of the applicant would have to be kept in a sealed cover. The judgment

of the Hon'ble Supreme Court in **Union of India etc. etc. Vs. K.V.Jankiraman etc.etc** (1991) 4) SCC 109) and DOPT instructions in this regard are very clear and cannot be deviated from. The option before the respondents was, therefore, either to keep the post of Electrical Inspector vacant or to fill up the post through the other alternative mode provided in the RRs, namely through deputation. Obviously, in the interest of administration, the respondents opted for the deputation route. We are, however, in agreement with the learned counsel for the applicant that circular dated 3.06.2016 is not in order as the RRs cannot be modified through a Circular. Nonetheless, it does not effect the action of the respondents as the RRs also provide for the deputation route. The Hon'ble High Court of Delhi in **Suresh Chandra** case as cited above has already held that in such cases the DPC need not to be held. Obviously, the judgment of Hon'ble High Court will prevail over the order passed by this Tribunal in OA 2227/2013 on this issue. Even otherwise, where the department is not ready to give a charge of technical and sensitive post to the applicant, surely there is no ground for the applicant to claim that he has to be promoted as Electrical Inspector. In fact, in OA Nos.3210 and 3805/2012 his prayer for ad hoc promotion was also dismissed by this Tribunal as also his prayer for cancellation of his posting as OSD (Coordination) [Labour Welfare) i.e. in a non-technical and non sensitive after revocation of his suspension. The grounds highlighted have not changed his status and, since the applicant has lost his case even for grant of ad hoc promotion, there is no case for

considering him for regular promotion as Electrical Inspector. Therefore, the OA does not succeed and is dismissed. MA 10/2017 is also disposed of.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P. K. Basu)
Member (A)

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